IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

CHAMBER SUMMONS NO.1593 OF 2007
IN
APPEAL NO.813 OF 2006
IN
ARBITRATION PETITION NO.369 OF 2006

Nina Anil Shah. ...Appellant.
Vs.
Kusum Bhaskarrao Gorule alias
Geetanjali Ganesh Sohane. ...Respondent.
....
Mr. S.M. Sakhardande i/b. Mr. Anil Shah for the Applicant.
Mr. M.P. Rao with Mrs. R.R. Ajinkya for the Respondent.
.....
CORAM : SMT.RANJANA DESAI &
DR.D.Y.CHANDRACHUD, JJ.

October 1, 2007.

P.C. :

This Chamber Summons is taken out by the Appellant-Applicant, the original Petitioner, praying that he be permitted to amend the Memo of Appeal in terms of the schedule annexed to the Chamber Summons.

2. We have heard learned Counsel for the Appellant-

Applicant and learned Counsel for the Respondent. The award dated 1st August 2006 was challenged by filing Arbitration Petition No.369 of 2006 and the Learned Single Judge by his order dated 3rd October 2006 dismissed the petition. The instant appeal was admitted on 29th January 2007. While admitting the appeal, this Court passed the following interim order:

> "Heard. Interim relief is made absolute in terms of the prayer clause (a), subject to the appellant depositing in this Court fifty percent of the decretal amount as of today and furnishing bank guarantee of any nationalised bank for fifty percent of the balance decretal amount within six weeks.
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> Liberty to the respondent to withdraw the amount so deposited on furnishing bank guarantee of any nationalized bank."

3. Special Leave Petition carried from the interim order dated 29th January 2007, was dismissed by the Supreme Court on 26th March 2007.

4. Review Petition filed by the Appellant-applicant was allowed to be withdrawn on 21st September 2007 by this Court by

passing the following order:

> "Heard. It is the contention on behalf of the appellant that there was error on the part of the arbitrator in calculating the liability towards the expenses. The learned counsel for the appellant states that in order to enable the appellant to move necessary amendment to the memo of the appeal and thereafter to take appropriate proceedings, the appellant craves leave to withdraw the present petition at this stage. The petition is accordingly allowed to be withdrawn and stands disposed of."

Thereafter the Petitioner has taken out the present Chamber Summons on 24th September 2007.

5. Learned Counsel appearing for the Petitioner contended that the Petitioner merely wants to add grounds already mentioned in the Appeal Memo and the grounds can no way alter the basic cause of action and basic substance of the Memo of Appeal.

6. Learned Counsel appearing for the Respondent strenuously opposed the prayer for leave to amend. The attention of the Court is drawn to judgment of this Court in **Pushpa vs. Admiral**

Radhakrishin, 2000(4) Mh. L.J. 819 and yet another judgment of a Division Bench to which one of us (Ranjana Desai, J.) was a party in **Vastu Invest & Holdings Pvt. Ltd. vs. Gujarat Lease Financing Ltd.,** 2002 (Supp.) Bom. C.R. 246. It is submitted that the present Chamber Summons is clearly out of limitation and the delay cannot be condoned.

7. In **Vastu's** case (supra), the Learned Single Judge of this Court had dismissed the Chamber Summons on the ground that it was taken out after the period provided under Section 34(3) of the Arbitration and Conciliation Act, 1996, ("the said Act") was over and that allowing the Chamber Summons would amount to permitting an independent ground of challenge after the period of limitation under Section 34 had expired. The Division Bench upheld this contention. The Division Bench observed that Section 34(1) of the said Act provides that an Arbitral Award may be challenged only by an application for setting aside such award in accordance with sub-sections (2) and (3). Sub-sections (2) and (3) of Section 34 provide

that an Arbitral Award may be set aside only on the grounds narrated in sub-section (2). Sub-Section (3) provides that such an application for setting aside an Award may not be made after three months have elapsed from the date on which the party making that application had received the Arbitral Award, or if a request had been made under Section 33, from the date on which the said request had been disposed of by the Arbitral Tribunal. The Division Bench further observed that there is extremely narrow power of condonation of delay vested in the Court by the proviso. The proviso empowers the Court, if satisfied that the applicant was prevented by sufficient cause from making the application within the period of three months, to entertain the application within a period of 30 days but not thereafter. The Division Bench further observed that the Chamber Summons, if it was intended to raise an independent ground of challenge to the Arbitral Award could not have been entertained after the period of three months plus the grace period of 30 days as provided in the proviso to sub-section (3) of Section 34.

8. The above judgment is clearly attracted to this case. Considering the dates which we have noted hereinabove, the present Chamber Summons is clearly filed after the period of limitation had expired. If the amendment is allowed, it will be contrary to the provisions of Section 34(3). If as contended by the Petitioner, the amendment is not intended to introduce, new grounds of challenge than the amendment is wholly unnecessary.

9. In the circumstances, the Chamber Summons is dismissed.

SMT.RANJANA DESAI, J.

Dr.D.Y. CHANDRACHUD, J.